



**BILLING CODE: 4410-09-P**

**UNITED STATES DEPARTMENT OF JUSTICE  
Drug Enforcement Administration**

**Bill Alexander, M.D.  
Decision And Order**

On September 22, 2011, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Bill Alexander, M.D. (Applicant), of Porter, Texas. The Show Cause Order proposed the denial of Applicant's application for a DEA Certificate of Registration as a practitioner in schedules II through V, on the ground that his "registration would be inconsistent with the public interest." Show Cause Order at 1 (citing 21 U.S.C. 823(f) & 824(a)(4)).

The Show Cause Order alleged that on December 3, 2010, Applicant applied for a practitioner's registration in schedules II-V at the location of 24420 FM 1314, Suite 101, Porter, Texas. Id. The Show Cause Order then alleged that on or about June 18, 2009, Applicant unlawfully possessed 64 kilograms of marijuana, a schedule I controlled substance, in violation of both federal and state law. Id. at 2 (citing 21 U.S.C. 841(a)(1) and Texas Health & Safety Code Ann. 481.121(b)(5)).

Next, the Show Cause Order alleged that on or about June 18, 2009, Applicant told law enforcement agents that he was transporting the marijuana for a drug dealer, and that he had transported over a dozen such loads of marijuana in the past. Id. The Order further alleged that Applicant told the agents that he was addicted to and used crack cocaine, a schedule I controlled substance.<sup>1</sup> Id.

---

<sup>1</sup> Under federal law, crack cocaine is a schedule II controlled substance. 21 CFR 1308.12(b)(4).

The Show Cause Order also alleged that on or about February 4, 2011, the Texas Medical Board entered a Corrective Order against Applicant's medical license. Id. According to the allegations, the Texas Board found that Applicant prescribed controlled substances to individuals without holding a valid Texas Controlled Substances Registration, in violation of state law. Id. (citing Tex. Health & Safety Code Ann. 481.061(a)).

The Show Cause Order further alleged that during various interviews with DEA Investigators, Applicant stated his desire to open a pain management clinic in order to make money. Id. According to the allegations, Applicant stated his "belief that the purpose of a pain management clinic was to give addicts their prescriptions because other doctors won't do it." Id.

The Show Cause Order, which also notified Applicant of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for doing either, and the consequence for failing to do either, id. at 2 (citing 21 CFR 1301.43), was served on Applicant by registered mail addressed to him at the address he provided on his application. While the return receipt card did not include a delivery date, Applicant subsequently confirmed to Government Counsel that he received the Order on September 26, 2011. GX 4; Request for Final Action, at 2.

Since the date of service of the Order, thirty days have now passed and neither Applicant, nor anyone purporting to represent him, has requested a hearing or submitted a written statement in lieu of a hearing. I therefore find that Applicant has waived his right to a hearing or to submit a written statement in lieu of a hearing, and issue this Decision and Final Order based on relevant evidence contained in the record submitted by the Government. 21 CFR 1301.43(d) & (e). I make the following additional findings of fact.

## **FINDINGS**

### **Applicant's Licensure and Registration Status**

Applicant is a physician licensed by the Texas Medical Board (hereinafter, the Board). GX 6. On February 4, 2011, a Quality Assurance Panel of the Board issued a Corrective Order to Applicant. Id. Therein, the Board found that notwithstanding that Applicant had allowed his Texas Controlled Substance Registration to expire on October 31, 2008, he had continued to write prescriptions for controlled substances through October 21, 2009, when his state license was renewed. Id. The Order imposed an administrative penalty in the amount of \$500 against Applicant. Id. at 1-2 (citing Tex. Occ. Code Ann. 164.002(a) & (d), and 164.053(a)(1)).

Applicant previously held DEA Certificate of Registration BA0549177, which authorized him to dispense controlled substances in schedules II through V, as a practitioner, at the registered location of 1406 Wilson Road, Conroe, TX, 77304. GX 2. This registration expired by its terms on June 30, 2003. Id.

On March 30, 2004, Applicant was granted Certificate of Registration BA8721765, which also authorized him to dispense controlled substances in schedules II through V, as a practitioner, at the registered location of 350 South Adams, Eagle Pass, TX 78852. This registration expired by its terms on June 30, 2010. Id.

On December 3, 2010, Applicant submitted a new application for a practitioner's registration in schedules II through V, through the Office of Diversion Control's website. It is this application which is at issue in this proceeding.

### **Evidence Regarding the Substantive Allegations**

On June 18, 2009, following a traffic stop, Applicant was arrested by a Texas Highway Patrol Officer for possession of marijuana, a schedule I controlled substance. GX 5. At the time

of his arrest, the Trooper conducted a consensual search of Applicant's vehicle, during which he found two large black suitcases which contained marijuana and a small black toiletry bag which contained several homemade smoking pipes. Id. at 4-5. Regarding the pipes, which the Trooper identified as drug paraphernalia, the Trooper asked Applicant what he used them for; Applicant stated: "to smoke." Id. The Trooper then asked Applicant what he smoked; Applicant replied: "crack," which is a schedule II controlled substance. Id. Respondent was then arrested; however, he was not criminally charged.

On December 6, 2010, a DEA Diversion Investigator (DI) began an investigation of Applicant's December 3, 2010 application for a DEA registration. GX 7 (DI's affidavit). According to the DI's affidavit, because Applicant cooperated with another ongoing law enforcement investigation, he was never criminally charged in connection with his arrest for possession of marijuana on June 18, 2009. Id.

The DI stated that during a phone conversation on January 11, 2011, Applicant admitted that at the time of his June 2009 arrest, which he characterized as a mistake, he was transporting marijuana for a drug trafficking organization because he needed the money. Id. at 2. Applicant told the DI he planned to open a medical clinic, with other practitioners, which would specialize in orthopedic surgery and pain management. Id. He stated that his desire to open a pain management clinic was only because he wanted to make money and that he would "do anything to make money." Id.

During a subsequent in-person interview, Applicant told the DIs that he closed his last medical practice, an orthopedic surgery center, in 2008. Id. He also admitted that he had abused crack cocaine in the past, but had stopped using crack cocaine in 2009 after having a heart attack. Id. However, Applicant never underwent a drug treatment program. Id.

Applicant told the DIs that after closing his medical practice in late 2008, he agreed to transport marijuana for a drug organization. Id. Applicant admitted to having driven loads of marijuana from Eagle Creek or Del Rio, Texas to either San Antonio or Austin because he was having financial problems and he would “do anything not to lose [his] property.” Id. He also admitted that he transported such loads approximately every other weekend from the end of 2008 until he was arrested in June 2009, but he was uncertain as to the exact number of loads he had delivered. Id. at 2-3. Applicant stated that he was paid \$50 per pound, and that he usually received \$3,000 to \$5,000 per load of marijuana. Id. at 3.

Applicant told the DIs that he only wanted to open a pain clinic to share the overhead costs of a medical clinic with other practitioners, that he did not have any formal pain management training, and that he “hated those kinds of patients.” Id. at 3. Moreover, he then stated that pain management clinics were good because they served individuals who were addicted to pain medication without “bogging down other clinics asking for pain pills.” Id. When asked by the DIs what he would do when he had twenty patients waiting for their prescriptions, Applicant responded that “if their doctors gave them a prescription and they’re hooked, if they’re a functioning patient, probably give it to them. What else are you gonna [sic] do with them?” Id.

Upon being told by the DI that she was recommending the denial of his application based on his previous involvement with transporting large quantities of marijuana and his intention to open a pain clinic, Applicant asked the DI if she thought that “there’s a proper way” to manage a pain clinic and make sure everything was done correctly. Id. When the DI said that she did not think it was proper to provide prescriptions to addicts, Applicant replied: “What do you

think pain management clinics are for? They give addicts their prescriptions because other doctors won't do it!"' Id. at 3-4.

## **DISCUSSION**

Section 303(f) of the Controlled Substances Act (CSA) provides that an application for a practitioner's registration may be denied upon a determination "that the issuance of such registration would be inconsistent with the public interest." 21 U.S.C. 823(f). In making the public interest determination in the case of a practitioner, Congress directed that the following factors be considered:

- (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
- (2) The applicant's experience in dispensing . . . controlled substances.
- (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
- (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
- (5) Such other conduct which may threaten the public health and safety.

Id.

"[T]hese factors are considered in the disjunctive." Robert A. Leslie, 68 FR 15227, 15230 (2003). I "may rely on any one or a combination of factors and may give each factor the weight [I] deem[] appropriate in determining whether . . . to deny an application." Id.; see also Volkman v. DEA, 567 F.3d 215, 222 (6th Cir. 2009). While I must consider each factor, I am "not required to make findings as to all of the factors." MacKay v. DEA, 664 F.3d 808, 816 (10th Cir. 2011); Hoxie v. DEA, 419 F.3d 477, 482 (6th Cir. 2005).

With respect to a practitioner's registration, the Government has the burden of proving by substantial evidence that granting a registration would be inconsistent with the public interest.

See 21 CFR 1301.44(d).<sup>2</sup> As no DEA regulation provides that the entry of a default is a consequence of the waiver of the right to a hearing, the Government must therefore support its proposed action with substantial evidence.

In this matter, I have considered all of the factors and conclude that the evidence relevant to Respondent's experience in dispensing controlled substances (factor two), his compliance with applicable laws related to controlled substances (factor four), and his having engaged in other conduct which may threaten the public health and safety (factor five), conclusively establishes that granting his application would be "inconsistent with the public interest." 21 U.S.C. 823(f).

**Factors One and Three – The Recommendation of the State Licensing Board and the Applicant's Conviction Record Under Federal or State Laws Relating to the Manufacture, Distribution or Dispensing of Controlled Substances**

As found above, the Board found that Applicant dispensed controlled substances for nearly a year without the requisite state controlled substance registration. However, the Board took no action against Applicant's medical license other than to impose a \$500 administrative penalty and he thus retains an active state medical license. Also, Applicant apparently still holds a valid Texas Controlled Substance Registration.

However, while the CSA makes holding authority to dispense controlled substances a condition of obtaining a DEA registration, it is not dispositive of the public interest inquiry. Rather, in enacting the public interest amendments to the CSA, Congress vested this Agency with "a separate oversight responsibility [apart from that which exists in State authorities] with respect to the handling of controlled substances." Mortimer B. Levin, 55 FR 8209, 8210 (1990).

---

<sup>2</sup> As found above, Applicant neither requested a hearing nor submitted a written statement explaining his position on the matters of fact and law asserted. By contrast, in a contested case, where the Government satisfies its prima facie burden, as for example, by showing that an applicant has committed acts which are inconsistent with the public interest, the burden then shifts to the Applicant to demonstrate why he can be entrusted with a registration. Medicine Shoppe-Jonesborough, 73 FR 363, 387 (2008).

DEA has therefore long recognized that it has “a statutory obligation to make its independent determination as to whether the granting of [a registration] would be in the public interest.” Id. Accordingly, “DEA has long held \* \* \* that a State's failure to take action against an Applicant's medical license [or State controlled substance registration] is not dispositive in determining whether the continuation of a registration is in the public interest.” Jayam Krishna-Iyer, 74 FR 459, 461 (2009); see also Levin, 55 FR at 8210 (holding that practitioner's reinstatement by state board “is not dispositive” in public interest inquiry). Thus, that neither the Texas Medical Board nor Texas Department of Public Safety has suspended or revoked Applicant’s medical license or controlled substance registration is of no consequence in determining whether his continued registration is consistent with the public interest.

Likewise, the fact that Applicant has not been convicted of an offense falling within factor three, notwithstanding his arrest and admission that on numerous occasions he transported large quantities of marijuana for a drug trafficking organization, is not dispositive. As previously explained, and as this case demonstrates, there are a variety of reasons why a person who has engaged in criminal conduct may not have been convicted, let alone charged with a criminal offense. See Dewey C. MacKay, 75 FR 49956, 49973 (2010). Accordingly, I find that factor three is not dispositive of whether granting Applicant’s application would be consistent with the public interest.

**Factors Two and Four – Applicant’s Experience in Dispensing Controlled Substances and Record of Compliance with Applicable Controlled Substance Laws**

The Texas Board found that Applicant allowed his Texas Controlled Substance Registration to expire on October 31, 2008, and yet continued to write controlled substance prescriptions in violation of Texas law until he renewed his license on October 21, 2009. GX 6, at 1-2. This was also a violation of federal law.



Under a DEA regulation, “[a] prescription for a controlled substance may be issued only by an individual practitioner who is . . . authorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession.” 21 CFR 1306.03(a)(1). By issuing prescriptions when he did not possess state authority, Respondent thus violated the CSA as well. See 21 U.S.C. 841(a)(1) (“Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally . . . to . . . dispense . . . a controlled substance[.]”).

In addition, Applicant admitted to the DIs that on numerous occasions, he illegally transported large quantities of marijuana for a drug trafficking organization and was paid to do so. GX 7, at 2-3. This conduct also violated 21 U.S.C. 841(a)(1), which prohibits both the knowing or intentional distribution of a controlled substance, as well as the possession of a controlled substance with the intent to distribute.

Finally, Applicant admitted that he abused crack cocaine. GX 7, at 2. This conduct violated 21 U.S.C. 844(a), which makes it “unlawful for any person knowingly or intentionally to possess a controlled substances unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as authorized by” the CSA or the Controlled Substances Import Export Act. In addition, Respondent’s conduct violated various provisions of state law. See Tex. Health & Safety Code 481.115(a) and 481.121(b)(5). Thus, the evidence with respect to factors two and four provides ample reason to deny Applicant’s application.<sup>3</sup>

---

<sup>3</sup> As evidence of his likely non-compliance with applicable laws related to controlled substances, I note that during his interviews with DEA Investigators regarding the purpose of his proposed registration, Applicant stated that he wanted to open a pain clinic “only because he wanted to make money, and that he would do anything to make money.” Id. at 2. Moreover, Applicant expressed the view that pain clinics were good because they served individuals who were addicted to pain medication without “bogging down other clinics asking for pain pills.” GX 7, at 3. Subsequently, Applicant stated “what do you think pain management clinics are for? They give addicts their prescriptions because other doctors won’t do it!” Id. at 3-4. Putting aside the misconduct proven on this record, Applicant’s comments do not inspire confidence that he would comply with federal requirements such as 21 CFR

### **Factor Five – Such Other Conduct Which May Threaten the Public Health and Safety**

As found above, during the consensual search of Applicant's vehicle, a Texas Highway Patrol Officer found several home-made pipes, and upon being questioned as to what he used them for, Applicant admitted that he smoked crack cocaine. Also, Applicant admitted to DEA Investigators that he had previously abused crack cocaine. While Applicant later claimed that he had stopped using crack after suffering a heart attack, he also stated that he never underwent drug rehabilitation treatment.

DEA has "long held that a practitioner's self-abuse of a controlled substance can be considered under Factor Five even if there is no evidence that [he] abused his prescription-writing authority or otherwise engaged in an unlawful distribution to others." See Scott D. Fedosky, 76 FR 71375, 71378 (2011). See also Tony T. Bui, 75 FR 49979, 49989-90 (2010) (collecting cases); David E. Trawick, 53 FR 5326, 5327 (1988). Thus, even if there was no other evidence of misconduct on the part of Applicant, his self-abuse of crack cocaine would by, itself, constitute conduct which threatens public health and safety and renders his proposed registration "inconsistent with the public interest." Id. 823(f).

### **CONCLUSION**

Based on Applicant's misconduct in issuing prescriptions without the requisite state authority, see 21 CFR 1306.03(a), his admitted transportation of marijuana for a drug trafficking organization, see 21 U.S.C. 841(a)(1), and his self-abuse of crack cocaine, I conclude that Applicant's registration would be "inconsistent with the public interest." Id. 823(f). Accordingly, his application will be denied.

---

1306.04(a), which requires that a prescription for a controlled substance be issued only for a legitimate medical purpose by a practitioner acting in the usual course of professional practice.

## **ORDER**

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b), I order that the application of Bill Alexander, M.D., for a DEA Certificate of Registration, be, and it hereby is, denied. This Order is effective immediately.

Dated:  
June 2, 2012

Michele M. Leonhart  
Administrator

[FR Doc. 2012-14316 Filed 06/11/2012 at 8:45 am; Publication Date: 06/12/2012]